

Richard S. Diestel, No. 095059  
Alison M. Crane, No. 197359  
**BLEDSON, CATHCART, DIESTEL & PEDERSEN, LLP**  
601 California Street, 16th Floor  
San Francisco, California 94108-2805  
Telephone: (415) 981-5411  
Facsimile: (415) 981-0352

Attorneys Specially Appearing for Defendant  
Kirk Brinks

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

ROBERT COHEN, an individual,

Plaintiff,

v.

TIMBERS COMPANY, INC., a Colorado  
corporation, et al.,

Defendants.

No. C 05-03680 EDL

**STIPULATION AND ORDER**  
**RE: DEPOSITION OF KIRK**  
**BRINKS AND ENLARGEMENT OF**  
**TIME**

Complaint Filed: September 13, 2005

Trial Date: June 18, 2007

Plaintiff Robert Cohen and defendant Kirk Brinks hereby agree and stipulate as follows:

WHEREAS, plaintiff Robert Cohen has filed a First Amended Complaint which names *inter alia* Kirk Brinks as a defendant;

WHEREAS, plaintiff has endeavored to effectuate service on Brinks and has filed Declarations of Service with the Court; and

WHEREAS, defendant Brinks challenges the sufficiency of the alleged service and this Court's jurisdiction over his person;

- 1           1. Defendant Brinks will agree to voluntarily sit for deposition in the United  
2 States of America at a location of Brinks' choosing at a mutually convenient time  
3 within the next sixty (60) days, and agree to answer all questions not subject to  
4 privilege and any other objections available to him under the Federal Rules of  
5 Civil Procedure.
- 6           2. Plaintiff will pay for the actual cost of Brinks' coach airline travel to and  
7 from the site of the deposition for said deposition at a cost not to exceed  
8 \$1,000.00.
- 9           3. Plaintiff agrees that he will not attempt to serve Brinks at the time of the  
10 deposition or in connection with his trip to or from the site of the deposition, or at  
11 any other time or place prior to December 8, 2006.
- 12           4. After completion of the deposition and the previously scheduled December  
13 8, 2006 mediation, plaintiff will determine whether he wishes to proceed with this  
14 action with respect to Brinks; if plaintiff determines to proceed against Brinks, he  
15 will give written notice to counsel for Brinks who will have 20 days to challenge  
16 service, jurisdiction, file any motion authorized by Federal Rule 12(b), answer or  
17 otherwise respond to the First Amended Complaint (or any subsequent  
18 complaint).
- 19           5. In exchange for voluntarily providing this deposition, plaintiff Cohen  
20 agrees that defendant Brinks reserves all rights and challenges with respect to the  
21 service of the summons and the First Amended Complaint (or any subsequent  
22 complaint filed in this matter). This includes, but is not limited to, any challenges  
23 to the service of summons in this matter or to the exercise of personal jurisdiction  
24 over him by this Court.
- 25           6. All parties to this stipulation agree that the filing of this document does not  
26 constitute an appearance in this action by Kirk Brinks and does not, in any way,  
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constitute a waiver of any rights or the ability to file any motion authorized by *inter alia* Federal Rule of Civil Procedure 12(b).

7. Provided the deadlines set forth in this stipulation are met, plaintiff agrees he will not raise any issues about the timeliness on any motions to challenge the service of the summons or any challenges to the complaint and any delay in filing said motion due to this stipulation will not work in any way to the prejudice or disadvantage of Brinks and with this Court's order below, this Court will consider any Rule 12b motions by Brinks as if they had been filed and promptly noticed for hearing on October 2, 2006.

8. Nothing about this stipulation and order shall be construed against Brinks for determining the adequacy of service or personal jurisdiction.

9. Nothing about Brinks' agreement to participate in or his appearance at the deposition shall be construed against Brinks for determining the adequacy of service or personal jurisdiction.

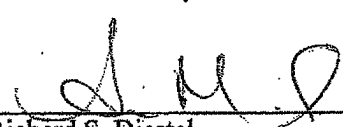
10. Any voluntary settlement of this action between plaintiff and Timbers Company, Inc. will include a dismissal with prejudice as to Brinks.

The parties agree to each of the terms of this stipulation and request that this Court order the implementation of this Stipulation.

Dated: September 29, 2006

BLEDSON, CATHCART,  
DIESTEL & PEDERSEN, LLP

By

  
Richard S. Diestel  
Alison M. Crane  
Attorneys Specially Appearing for Defendant  
Kirk Brinks

[Signature blocks and order continue on next page]


1 Dated: October 2, 2006

NAGLER & ASSOCIATES

2  
3 By David F. Berry  
4 David F. Berry  
Attorneys for Plaintiff ROBERT COHEN

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7 PURSUANT TO STIPULATION, IT IS SO ORDERED

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9 Dated: October 6, 2006

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Honorable Judge Elizabeth D. Laporte  
Magistrate Judge, United States District Court

**PROOF OF SERVICE**

STATE OF CALIFORNIA                     )  
  ) ss.  
COUNTY OF LOS ANGELES             )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2300 South Sepulveda Blvd., Los Angeles, California, 90064.

On October 2, 2006, I served the foregoing document described as: **STIPULATION AND ORDER RE: DEPOSITION OF KIRK BRINKS AND ENLARGEMENT OF TIME**, on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

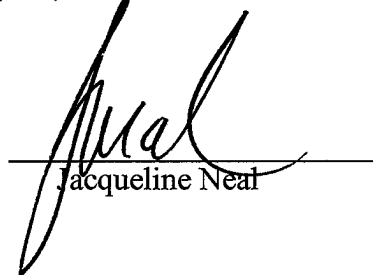
Robert A. Ford, Esq.  
David V. Roth, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
One Sansome Street, Suite 1400  
San Francisco, CA 94104

Attorney for Defendants Timbers  
Company, Inc.

(x) **BY MAIL (1013a, 2015.5 C.C.P.):** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 2, 2006 at Los Angeles, California.

  
\_\_\_\_\_  
Jacqueline Neal